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FILED

SEP 16 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

10
11 JOHN MOORE,)
12 Plaintiff,)
13 v.)
14 PREGER & WERTENTEIL, INC.; and DOES)
1-150, inclusive,)
15 Defendants.)
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Case No. 1104614

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

BY FAX

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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff John Moore, in the
3 public interest of the citizens of the State of California, to enforce the People's right to be
4 informed of the presence of Di-n-butyl phthalate ("DBP"), a toxic chemical found in footwear
5 sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to warn
7 California citizens about their exposure to DBP, present in or on certain footwear that defendant
8 manufactures, imports, distributes, and/or offers for sale to consumers and businesses throughout
9 the State of California.

10 3. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health & Safety Code § 25249.6 *et seq.* ("Proposition 65"), "No person in the course
12 of doing business shall knowingly and intentionally expose any individual to a chemical known
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual..." (*Cal. Health & Safety Code § 25249.6.*)

15 4. On December 2, 2005, California identified and listed DBP as a chemical known
16 to cause birth defects and other reproductive harm. DBP became subject to the warning
17 requirement one year later and was, therefore, subject to the "clear and reasonable warning"
18 requirements of Proposition 65, beginning on December 2, 2006. (*27 CCR § 27001 (c); Cal.*
19 *Health & Safety Code §§ 25249.8 & 25249.10(b).*)

20 5. Defendant Preger & Wertenteil, Inc. ("P&W" or "Defendant") manufactures,
21 imports, distributes, and/or sells footwear containing DBP including, but not limited to, *GMI*
22 *Gold Metal Flip Flops, FLIP-520 H (#0 81091 10718 2).*

23 6. All such footwear containing DBP shall hereinafter be collectively referred to as
24 the "Products."

25 7. Defendant's failure to warn consumers and/or other individuals in the State of
26 California not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to DBP in conjunction with Defendant's distribution, importation,
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1 manufacture, and/or sale of the Products is a violation of Proposition 65 and subjects Defendant
2 to enjoinder of such conduct as well as civil penalties for each such violation.

3 8. For Defendant's violation of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel Defendant to provide purchasers or users of the
5 PRODUCTS with the required warning regarding the health hazards of DBP. (*Cal. Health &*
6 *Safety Code § 25249.7(a).*)

7 9. Plaintiff also seeks civil penalties against Defendant for its violations of
8 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 10. John Moore is a citizen of the State of California who is dedicated to protecting
11 the health of California citizens through the elimination or reduction of toxic exposures from
12 consumer and commercial Products, and brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7.

14 11. P&W is a person doing business within the meaning of California Health & Safety
15 Code § 25249.11.

16 12. P&W manufactures, imports, distributes, and/or offers the Products for sale or use
17 in the State of California or implies by its conduct that it manufactures, imports, distributes,
18 and/or offers the Products for sale or use in the State of California.

19 13. Defendants DOES 1-50 ("Manufacturer Defendants") are each persons doing
20 business within the meaning of California Health & Safety Code § 25249.11.

21 14. Manufacturer Defendants engage in the process of research, testing, designing,
22 assembling, fabricating, and/or manufacturing, or imply by their conduct that they engage in the
23 process of research, testing, designing, assembling, fabricating, and/or manufacturing one or
24 more of the Products offered for sale or use in the state of California.

25 15. Defendants DOES 51-100 ("Distributor Defendants") are each persons doing
26 business within the meaning of California Health & Safety Code § 25249.11.

1 the State of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Proposition 65 - Against All Defendants)**

6 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 23, inclusive.

8 25. The citizens of the State of California have expressly stated in Proposition 65 that
9 they must be informed "about exposures to chemicals that cause cancer, birth defects and other
10 reproductive harm." (*Cal. Health & Safety Code § 25249.6*.)

11 26. Proposition 65 states, "[n]o person in the course of doing business shall knowingly
12 and intentionally expose any individual to a chemical known to the state to cause cancer or
13 reproductive toxicity without first giving clear and reasonable warning to such individual...."
14 (*Id.*)

15 27. On March 17, 2011, a 60-Day Notice of Violation, together with the requisite
16 Certificate of Merit (the "Notice"), was provided to P&W and various public enforcement
17 agencies stating that as a result of Defendant's manufacture and/or distribution of the Products,
18 purchasers and users in the State of California were being exposed to DBP resulting from the
19 reasonably foreseeable uses of the Products, without the individual purchasers and users first
20 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

21 28. DEFENDANTS have engaged in the manufacture, importation, distribution, and/or
22 offering of the Products for sale or use in violation of California Health & Safety Code § 25249.6
23 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the Products for
24 sale or use in violation of California Health & Safety Code § 25249.6 has continued to occur
25 beyond Defendant's receipt of plaintiff's Notice. Plaintiff further alleges and believes that such
26 violations will continue to occur into the future.

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1 29. After receipt of the claims asserted in the Notice, the appropriate public
2 enforcement agencies have failed to commence and diligently prosecute a cause of action against
3 DEFENDANTS under Proposition 65.

4 30. The Products manufactured, imported, distributed, and/or offered for sale or use in
5 California by DEFENDANTS contained DBP above the allowable state limits.

6 31. DEFENDANTS knew or should have known that the Products manufactured,
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
8 DBP.

9 32. DBP was present in or on the Products in such a way as to expose individuals to
10 DBP through dermal contact and ingestion during the reasonably foreseeable use of the Products.

11 33. The normal and reasonably foreseeable use of the Products has caused and
12 continues to cause consumer and workplace exposures to DBP, as such exposure is defined by 27
13 California Code of Regulations ("CCR") § 25602(b).

14 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
15 the PRODUCTS would expose individuals to DBP through dermal contact and ingestion.

16 35. DEFENDANTS intended that such exposures to DBP from the reasonably
17 foreseeable use of the Products would occur by their deliberate, non-accidental participation in
18 the manufacture, importation, distribution, and/or offer for sale or use of Products to individuals
19 in the State of California.

20 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
21 consumers and/or other individuals in the State of California who were or who could become
22 exposed to DBP through dermal contact and ingestion during the reasonably foreseeable use of
23 the Products.

24 37. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
25 directly by California voters, individuals exposed to DBP through dermal contact and ingestion,
26 resulting from the reasonably foreseeable use of the Products, sold by DEFENDANTS without a
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1 "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm, for
2 which harm they have no plain, speedy, or adequate remedy at law.

3 38. As a consequence of the above-described acts, DEFENDANTS are liable for a
4 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
5 Safety Code § 25249.7(b).

6 39. As a consequence of the above-described acts, California Health & Safety Code
7 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

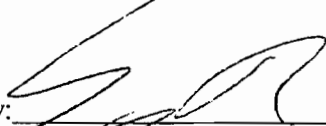
9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

- 11 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
12 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
13 herein;
- 14 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
15 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
16 offering the Products for sale or use in California, without providing "clear and reasonable
17 warnings" as defined by 27 CCR § 25601, as to the harms associated with exposures to DBP;
- 18 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
19 4. That the Court grant such other and further relief as may be just and proper.
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21 Dated: September 15, 2011

Respectfully Submitted,
THE CHANLER GROUP

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24 By: 
Troy C. Bailey
Attorneys for Plaintiff
JOHN MOORE